

DAVIS, COWELL & BOWE, LLP
Richard McCracken, SBN 65058

rmccracken@dcbsf.com

Paul L. More, SBN 228589

pmore@dcbsf.com

595 Market Street, Suite 800

San Francisco, CA 94105

Tel: (415) 597-7200

Fax: (415) 597-7201

Attorneys for UNITE HERE LOCAL 19

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
(San Jose Division)**

IAN MCCRAY, an individual, on behalf of
himself, and on behalf of all other persons
similarly situated,

Plaintiffs,

v.

UNITE HERE LOCAL 19,

Defendants.

) Case No: 5:16-cv-01233 – BLF

) **REQUEST TO FILE RESPONSE TO**
) **PLAINTIFF’S OBJECTIONS TO**
) **EVIDENCE OFFERED THROUGH**
) **DEFENDANT’S “SUPPLEMENTAL**
) **REQUEST FOR JUDICIAL NOTICE IN**
) **SUPPORT OF MOTION TO DISMISS”**

) Date: Thursday, August 11, 2016

) Time: 9:00 a.m.

) Court: Courtroom 3–5th Floor

) Assigned to: Hon. Beth Labson Freeman

) Complaint Filed: March 11, 2016

Defendant UNITE HERE Local 19 (the “Union”) respectfully requests leave to file a short response to Plaintiff Ian McCray’s Objections to Evidence Offered Through Defendant’s “Supplemental Request for Judicial Notice in Support of Motion to Dismiss” (the “Objections”) (Doc. 20). The Union makes this request pursuant to Local Rule 7-3(d).

McCray objects to three documents included with the Union's Supplemental Request for Judicial Notice (Doc. 19-1), filed with the Union's reply brief. These are: (1) a website page maintained by the San Jose Office of Equality Assurance answering "Frequently Asked Questions" about the San Jose Minimum Wage Ordinance; (2) City of Berkeley Minimum Wage Ordinance, Ordinance No. 7,352-N.S., Berkeley Municipal Code §§ 13.99.010 et seq., which contains a provision identical to the one at issue in this case; and (3) a website page maintained by the City of Berkeley Housing and Community Services Department answering "Frequently Asked Questions" about the Berkeley Minimum Wage Ordinance. The documents included with the Supplemental Request for Judicial Notice all responded to arguments that McCray made in his opposition brief. *See* Doc. 19, at 8, 9.

McCray does not argue that these documents are inauthentic or that they are not properly the subject of judicial notice. Instead, McCray argues that they are "irrelevant." Doc. 20, at 1-4. McCray's "relevance" objections amount to a sur-reply to the Union's motion to dismiss, and introduce at least two arguments that McCray has never previously raised: (1) that the Court may only look to ordinances and official acts that existed at the time the Union and the Employer negotiated a waiver to the San Jose Minimum Wage Ordinance (the "Ordinance") in determining whether the Union's conduct violated the duty of fair representation (*see* Doc. 20, at 1-2); and (2) that the Court may not look to San Jose city officials' interpretation of the Ordinance in determining whether the Union's similar interpretation violated the duty of fair representation (*see* Doc. 20, at 2, 4).

The Union requests leave to file a short response to both of these contentions, which McCray did not raise in his opposition brief.

Dated: May 20, 2016

Respectfully Submitted,

DAVIS, COWELL & BOWE, LLP

By: /s/ Paul L. More
Paul L. More

Attorneys for Defendant
UNITE HERE LOCAL 19

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 20, 2016, the foregoing **REQUEST TO FILE RESPONSE TO PLAINTIFF’S OBJECTIONS TO EVIDENCE OFFERED THROUGH DEFENDANT’S “SUPPLEMENTAL REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF MOTION TO DISMISS”** having been filed through the Electronic Court Filing “ECF” system and I am informed that it will be sent electronically to the following registered participants as identified on the Court’s Notice of Electronic Filing. The foregoing will be sent via first class mail to the attorneys of record who are not indicated as participants.

[X] All parties are registered participants as identified on the Court’s Notice of Electronic Filing.

Dated: _May 20, 2016

/s/ Lesley E. Phillips

LESLEY E. PHILLIPS